IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.282 OF 2002

M/s.Mahendra Builders. ..Petitioners.

V/s.

Parvez Ghaswala & Ors. ..Respondents.

Mr.G.S.Godbole with Avinash Joshi i/b. Mulla & Mulla for petitioners.

Mr.Naushad Engineer & Ms.S.T.Shaikh i/b S.K.Srivastav for respondent No.1.

Mr.Jai Chinoy with Sanjay Jain i/b.Zohair & Co. for respondent Nos.2 to 4.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 31, 2006.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. In my order dated March 29, 2006, statement made on behalf of the petitioner has been recorded to the effect that the petitioner was confining the present petition in the context of allegation of breach of injunction order passed by this court constituting Civil Contempt. Accordingly, deliberations were confined only to the said matter. It is already made clear in the earlier order that the remedy with reference to the allegations

constituting criminal contempt is left open. Those proceedings will be decided on its own merits in accordance with the law. So far as the present petition is concerned, the grievance is about breach of order dated 24th June, 1993. The relevant part of that order reads thus:

> "The Defendants are hereby restrained from transferring and/or parting with the possession of the suit premises save and except permissible under the provisions of the Bombay Rent Act."

3. The petitioner has approached this court on the allegation that the respondent Nos.2 and 3/original defendants have created third party interest in the suit property inspite of aforesaid injunction. According to the petitioner, this breach has been committed in the year 2000 but the petitioner became aware about the registered Assignment Deed only after taking search of the Register of the Registrar of Assurance. Here it may be mentioned that the case of the petitioner that he became aware of registered Assignment Deed is only vaguely stated in the memo but no material facts are provided even in the affidavit which has been filed

before this court. In other words, no jurisdictional facts are mentioned in the affidavit as to when the said search was taken and by whom and the source of information about existence of registered Assignment Deed came to the knowledge of the petitioner, such facts which were relevant to reckon the period of limitation. Be that as it may, in the petition as filed on 5th July, 2002, the petitioner asserts that the respondents have committed contempt which is continuing, contempt petition is within limitation.

4. The first question therefore, which arises for my consideration is whether the Contempt petition is within limitation. I have no hesitation in answering the same against the petitioner. This is so because, as is rightly pointed out by the respondents, the petitioner in the application-cum-affidavit filed before the Small Causes Court, Bombay in Interim Notice No.5511 of 2000 disclosed in paragraph 10 and 11 of the affidavit that they had knowledge about the fact that the defendants have illegally inducted unauthorised persons in the disputed premises, thereby committed contempt of the court. In this affidavit, it is also stated that petitioner reserves his right to pursue the remedy of contempt action for such breach. What is relevant to

note is that this affidavit has been filed before the Small Causes Court on 13th December, 2002. This presupposes that the petitioner had knowledge about the breach committed by the defendants on or before that date. The petitioner was also conscious about the fact that he has to file contempt action against the defendants. But present petition has been filed only on 4th July, 2002, which is obviously after one year from the date of knowledge of the breach of injunction committed by the defendants.

5. To get over this position, Mr. Godbole for the petitioner would contend that the petitioner had no knowledge about the existence of Registered Assignment Deed executed by the defendants in favour of the respondent No.1 till they took search of the Register maintained by the Registrar of Assurance, as is mentioned earlier in the additional affidavit. This case has been made out for the first time before this court and not in the original petition. Besides, no dates as to when, by whom search has been taken and other details are specified. In the course of argument, it was brought to my notice that petitioner applied for certified copy of the registered assignment Deed on 1st September, 2003 and certified copy of the Registered Assignment Deed was

made available to the petitioner on 2nd September, 2003. Relying on these dates, Mr. Godbole would contend that before getting copies of the Registered Assignment Deed, present petition came to be filed on 4th July, 2002, therefore, will have to be treated as having been filed within time. Besides, Mr.Godbole submits that it was incumbent upon the defendants/respondent No.2 and 3 to advertise the factum of creation of third party interest in the suit property on account of Registered Assignment Deed, which fact was within their personal knowledge. However, as that was not made known to the petitioner, the petitioner was kept in dark and in that sense, period of limitation will have to be reckoned from the date of knowledge of existence of Registered Assignment Deed.

6. In support of this submission reliance is placed on the decision of the Apex Court in the **Bank of Baroda V/s. Sadruddin Hasan Daya and Anr. reported in (2004) 1 Supreme Court Cases 360,** more particularly paragraph-11 of the said Judgment. I shall straightway deal with this Judgment. This Judgment is an authority on the proposition in the backdrop of following factual matrix. The contempt petition was filed in May, 2001. In that petition,

it was clearly stated that petitioner therein learnt about the consent decree passed in the case of Oman International Bank during the course of execution proceedings before the Debts Recovery Tribunal. This fact stated was not controverted by the respondent in the said case. Relying on this position, the Apex Court in paragraph-11 has observed that the respondents have neither controverted the said fact nor have they placed any material to show that the petitioners had got knowledge of the consent terms filed by the respondents in the Bombay High Court at any time prior thereto. On this finding the Court proceeds to observe that petition so filed was within limitation. This decision is on the fact situation of that case, which will be of no avail to the petitioner.

7. Mr.Godbole relied on another decision of the Apex court in **Pallav Sheth V/s. Custodian and ors. reported in (2001) 7 Supreme Court Cases 549,** more particularly paragraphs-44 and 47 of this decision. On the same Judgment, reliance is placed by the counsel for the respondents on paragraph-41 which deals with the principle underlying the law of limitation that a litigant must act diligently and not sleep over his rights. In my opinion, even the

decision in the case of **Pallav Sheth** is of no avail to the petitioner. The relevant paragraphs of the reported decision pressed into service deal with the general position as to in what circumstances, the provisions of law of limitation contained in Section 4 to 24(both inclusive) shall apply to any local law insofar as and to the extent to which, they are not expressly excluded by such special or local law; and that contempt of courts Act has been held to be a special law. What is relevant for our purpose in the present case is to find out whether the petitioner after acquiring knowledge about the creation of third party rights by the defendants/respondent Nos.2 and 3 in favour of the unauthorised persons took any initiative or made any reasonable investigation to discover the true position. Muchless to file contempt petition within one year therefrom. The answer to this will have to be held in the negative. If so, in view of the exposition in the case of **Pallav Sheth**, particularly paragraph 47 of the said Judgment, it will have to be held that petitioner does not deserve any indulgence of this court. As is rightly pointed out on behalf of the respondent that the question of limitation will have to be answered on the basis of the fact stated by the petitioner in the affidavit filed before the Small Causes Court

dated 13th December, 2002. In paragraph-10 and 11 of the said affidavit, it is stated that they have knowledge about the creation of the third party interest in the suit premises. There is nothing on record to show as to what steps were taken thereafter by the petitioner till 4th July, 2002 till this petition is filed, which is obviously more than one year after the statement made on affidavit before the Small Causes Court on 13th December, 2000. Counsel for the respondents has rightly invited my attention to the case made out by the petitioner in the petition as filed. Case of the petitioner is that the contempt committed by the respondents is a continuing contempt. It is on that basis it is asserted in paragraph-22 of the petition that petition as filed is within limitation. The question whether the alleged breach committed by the respondent Nos. 2 and 3 can be said to be continuing action has been rightly countered by the Respondents relying on the decision of the Apex Court in the case of **Balakrishna Savalram Pujari Waghmare & Ors. Vs. Shree Dhyaneshwar Maharaj Sansthan & Ors. reported in AIR 1959 S.C.798.** It is observed in this decision that section 23 of the Limitation Act refer not to a continuing right but to a continuing wrong. If the wrongful act causes an injury which is complete,

there is no continuing wrong even though the damage resulting from the act may continue. Reliance is also justly placed on the decision of the Nagpur bench in the case of **J.H.S.Evangelical German Mission, Superintendent Leprosy Asylum, Chandkhuri V/s. Mahant Ramsahaigir Chela Sunsergir Gosawi** reported in **AIR 1939 Nagpur 145.** Even in this decision, while considering provisions of Section 23 and Articles 142 and 144 of the Limitation Act, the Court observed that complete usurpation of possession and occupation and consequent dispossession of the owner of the land is a wrong which is complete from the moment of the dispossession. Relying on this observation, counsel for the respondent would contend that the creation of third party interest in the suit premises of any nature as is alleged by the petitioner, the act is completed and period of limitation would reckon in that case from the date of knowledge acquired by the petitioner in relation to the existence of that fact. Counsel for the respondent had rightly argued that the argument which was pressed into service across the bar on behalf of the petitioner that the date on which petitioner acquired knowledge of existence of registered Deed of Assignment, that case is not stated in the petition. Whereas in the Petition the case is one of continuing

contempt. Suffice it to observe that in the fact situation of the present case it is not possible to uphold the claim of continuing contempt. Thus, the Petition is barred by limitation.

8. Having taken this view, it is not necessary for me to elaborate on the merits of the case, as was canvassed by the rival parties. According to the petitioner, the act of transferring suit premises by Registered Assignment deed by the respondent Nos. 2 and 3 in favour of the respondent No.1 amounts to breach of order passed on 24th June, 1993, whereas according the respondent Nos. 2 and 3, the transfer so effected was inconfirmity with the injunction granted on 24th June, 1993. Inasmuch as the transfer was in accord with the provisions of the Bombay Rent Act.

9. As mentioned earlier, it is not necessary to enter into this controversy for the reasons already recorded. Accordingly, while dismissing this petition, it is once again made clear that all questions, which may arise on account of the transactions effected by the respondent Nos. 2 and 3 in favour of the respondent No.1 will have to be resolved in appropriate proceedings, which are

pending between the parties, uninfluenced by any observations in the impugned order or for that matter in this order. It will also be open to the petitioner to take recourse to the remedy for initiating action of criminal contempt, if so advised, which will be decided on its own merit.

10. Petition disposed of on the above terms.